

**BACKGROUND AND SCOPE:** The Agency of Human Services (hereinafter “AHS”) through the Department of Vermont Health Access (hereinafter “DVHA”) is soliciting proposals to contract with an actively licensed Physician(s) to provide medical oversight, prior authorization case review and medical necessity determinations in a Medicaid Managed Care environment.

The State has policies and procedures within its Clinical Operations Unit for Surveillance and Utilization Review activities. These activities are federally mandated for all State Medicaid Managed Care Organizations, as outlined in Title 42, Part 400, of the Code of Federal Regulations. The Contractor will provide consultative services on these activities, on an as needed basis, not to exceed twelve (12) hours per week, according to a mutually agreeable schedule as established by the Contractor, the State Clinical Operations Unit Director and the State’s Chief Medical Officer. Work will be performed at 312 Hurricane Lane, Williston, Vermont or a similarly suitable space as agreed to by the State and Contractor.

1. **CONTRACT PERIOD:** Contract(s) arising from this request for proposal will be for a period of two (2) years with an option to renew for two (2) additional one (1) year terms. Proposed start date will be January 1, 2018.
2. **SINGLE POINT OF CONTACT:** All communications concerning this Request for Proposal (RFP) are to be addressed in writing to the attention of:

Susan Whitney, Contracts and Grants Administrator  
[Susan.Whitney@vermont.gov](mailto:Susan.Whitney@vermont.gov)

Susan Whitney will be the sole point of contact for this proposal. Attempts by bidders to contact any other party could result in the rejection of their proposal.

3. **PROCUREMENT TIME TABLE:**

The RFP procurement schedule is below. The State reserves the right to modify any dates pertinent to this RFP.

RFP Posted	October 30, 2017
Proposal Due/Closing Date	November 13, 2017 at 11:00 a.m. EST
Bid Opening	November 13, 2017 at 11:30 a.m. EST
Selection Notification	December 1, 2017
Commencement of Contract	January 1, 2018

4. **COSTS OF PREPARATION:** The bidder shall be solely responsible for all expenses incurred in the preparation of a response to this RFP and shall be responsible for all expenses associated with any presentation or demonstrations associated with this request and or proposals made. The bidder shall also be solely responsible for the cost preparing responses to scope of work requests submitted by departments over the course of the contract.
5. **REJECTION RIGHTS:** DVHA may, at any time and at its sole discretion and without penalty, reject any and all proposals in any ‘catchment’ area and issue no contract in that area as a result

of this RFP. Furthermore, a proposal may be rejected for one or more of the following reasons or for any other reason deemed to be in the best interest of the State:

1. The failure of the bidder to adhere to one or more provisions established in this RFP.
2. The failure of the bidder to submit required information in the format specified in this RFP.
3. The failure of the bidder to adhere to generally accepted ethical and professional principles during the RFP process.

Read all instructions carefully. If you do not comply with any part of this RFP, DVHA may, at its sole option, reject your proposal as non-responsive. DVHA reserves the right to waive any requirements contained in this RFP.

6. **PUBLIC RECORD DISCLOSURE:** All bid proposals and submitted information connected to this RFP may be subject to disclosure under the State's access to public records law. The successful bidder's response will become part of the official contract file. Once the contract is finalized, material associated with its negotiation is a matter of public record except for those materials that are specifically exempted under the law. One such exemption is information that constitutes a trade secret 1 V.S.A. 317(c)(9), or that is designated confidential by law. 1 V.S.A. 317(c)(1). If the response includes material that is considered by the bidder to be exempt from disclosure under 1 V.S.A. 317(c), the bidder shall clearly designate the material as such prior to bid submission. The bidder must identify each the specific information that it believes is confidential and provide a written explanation relating to each marked portion to justify the denial of a public record request should the State receive such a request. The letter must address the confidential nature of each marked section, provide the legal authority relied on, and explain the harm that would occur should the material be disclosed. Hours and rate information may be marked exempt, but the total cost may not. Under no circumstances can the entire response be marked exempt from disclosure. Upon receipt of a public records request, DVHA will review all material designated exempt and will notify the bidder if any of the material marked exempt does not meet the legal criteria for exemption and will be subject to release. **If no exemptions are identified at the time of bid submission, Bidder's entire response will be subject to disclosure in the event of a public records request.**
7. **AUTHORITY TO BIND DVHA:** The Commissioner or designated Deputy Commissioner of DVHA (in parent AHS Secretary or Deputy Secretary) are the only persons who may legally commit DVHA to any contract agreements. The Contractor shall not incur, and DVHA shall not pay, any costs incurred before a contract is fully executed.
8. **CLOSING DATE & PROPOSAL PACKET DELIVERY:**
  1. Your proposal, (all components including original, hard copies, redacted copy with cover letter if applicable AND USB drive) whether mailed or hand delivered, must arrive at the Waterbury State Office Complex **no later than Monday, November 13, 2017 at 11:00 AM, Eastern Standard Time:**

Susan Whitney, Contract and Grant Administrator  
Department of Vermont Health Access  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671-1010

Bid envelopes must be clearly marked with 'SEALED BID – MEDICAID PHYSICIAN REVIEW AND CONSULTING SERVICES RFP #03410-300-18' and include name of bidder.

2. DELIVERY METHODS:

Security Procedures: Note that security procedures concerning delivery of any mail or parcels to NOB 1 South, 280 State Drive may delay receipt of mail/parcel pieces.

- a. U.S. MAIL: Bidders are cautioned that it is their responsibility to originate the mailing of bids in sufficient time to ensure bids are received and time stamped by DVHA prior to the time of the bid opening.
  - b. EXPRESS DELIVERY: If bids are being sent via an express delivery service, be certain that the RFP designation is clearly shown on the outside of the delivery envelope or box. Express delivery packages will not be considered received by the State until the express delivery package has been received and time stamped.
  - c. HAND DELIVERY: Hand carried bids shall be delivered to a representative of DVHA prior to the date and time noted on page 1.
  - d. ELECTRONIC: Electronic bids will not be accepted.
  - e. FAX BIDS: Faxed bids will not be accepted.
3. DVHA may, for cause, change the date and/or time of bid openings or issue an addendum. If a change is made, the State will make a reasonable effort to inform all bidders by posting to the electronic bulletin board at: <http://vermontbusinessregistry.com/>
  4. Late responses shall not be accepted and shall automatically be disqualified from further consideration. The method of delivery shall be at your discretion, and shall be at your sole risk to assure delivery at the designated office. DVHA does not take responsibility for any problems in mail or delivery, either within or outside DVHA. Receipt by any other office or mailroom is not equivalent to receipt by DVHA.
  5. The bid opening will be held at **The Waterbury State Complex, DVHA, NOB 1 South, 280 State Drive, Waterbury, VT**, and is open to the public.
  6. All bids will be publicly opened. Typically, DVHA will open the bid, read the name and address of the bidder, and read the bid amount. However, DVHA reserves the right to limit the information disclosed at the bid opening to the name and address of the bidder when, in its sole discretion, DVHA determines that the nature, type, or size of the bid is such that DVHA cannot immediately (at the opening) determine that the bids are in compliance with the RFP. As such, there will be cases in which the bid amount will not be read at the bid opening. Bid openings are open to members of the public. Bid results are a public record however, the bid results are exempt from disclosure to the public until the award has been made and the contract is executed. The Public is cautioned that extra time will be required when entering the State Complex. All individuals visiting NOB 1 South, 280 State Drive must present a valid government issued photo identification when entering the complex.

**9. PROPOSAL REVIEW:**

A review team of knowledgeable individuals will evaluate each proposal. The team members will be from the host district and/or the central office of DVHA. The Grants and Contracts Unit shall review all proposals for compliance with RFP procedural instructions. If the procedural instructions are not followed, the proposal shall be considered non-responsive. Non-responsive proposals will be eliminated from further evaluation.

**10. CONTENT AND FORMAT OF RESPONSES:**

The content and format requirements listed below are the minimum requirements for State evaluation. These requirements are not intended to limit the content of a Bidder's proposal. Bidders may include additional information or offer alternative solutions for the State's consideration. However, the State discourages overly lengthy and costly proposals, and Bidders are advised to include only such information in their response as may be relevant to the requirements of this RFP.

**10.1 Letter of Submittal:**

Provide one letter of submittal, signed by a person authorized to bind your organization to a contract. Faxed, oral, or emailed proposals are not acceptable. Your letter must include:

- a.** Identifying information about your organization and any sub-contractors. Include the name of the organization, names, addresses, telephone numbers, and address of principal officers and project/program leader, and a description of the type of organization you operate.
- b.** A detailed list of all materials and enclosures being sent in the proposal.
- c.** All required forms (See Appendix A).
  - 1. Cover Sheet
  - 2. State of Vermont Tax Certificate and Insurance Certificate
  - 3. Certifications and Assurances
  - 4. Certificate of Compliance
  - 5. Rate Sheet
  - 6. Summary of Funds
- d.** All optional forms applicable to your proposal (See Appendix A).
  - 1. Proposed Changes to Standard Terms and Conditions
  - 2. Subcontractor Letters
- e.** Any other statements you wish to convey to DVHA.

**10.2 Your proposal should respond to the following identified areas:**

- a.** Quality of bidder experience
- b.** Technical proposal/examination approach

c. Cost proposal

10.3 Proposal Format:

1. Use standard 8.5" x 11" white paper. Documents must be single-spaced and use not less than a twelve-point font.
2. Send one (1) clearly labeled original plus five (5) identical copies of each Program Proposal you are submitting and include a clearly labeled computer file copy of the document on a USB Drive. The file copy on the USB drive should include two files, one using Microsoft Word and a second using Adobe Acrobat PDF.
3. State your organization's name on each page of your program proposals and on any other information you are submitting.

10.4 Appendix A: Required General Forms:

Insurance Certificate:

As part of the proposal packet the Bidder must provide current certificates of insurance of which may or may not meet the minimum requirements laid out in Attachment C (Section 8) and Attachment D of this document. Any questions a bidder may have concerning the necessary insurance coverage must be raised during the question and answer period set out in Section 8 of this document. In the absence of a question, and upon contract negotiations the apparently successful bidder must provide a certificate of insurance that meets the minimum coverage specified in Attachments C and D of this document.

10.5 References:

Provide the names, addresses, and phone numbers of at least three parties or companies with whom you have transacted business with in the last 12 months. You must include contact names who can talk knowledgeably about your company's performance.

- 11. SCORING:** For each program proposal, the three (3) sections outlined in this section (Quality of Bidder Experience, Technical Proposal and Program Costs) must be responded to in your proposal. Proposals will be scored by individual team members. Scoring is intended to clarify strengths and weaknesses of proposals relative to one another and to provide guidance to decision-makers. The sum of the scores of the members will become the proposal's final score.

The State will evaluate the proposals based on the following:

- a. Quality of bidder experience – 40%
- b. Technical proposal/examination approach – 30%
- c. Cost proposal – 30%

The State reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Vendors may be asked to give a verbal presentation of their proposal after submission. Failure of vendor to respond to a request for additional information or clarification could result in rejection of that vendor's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause, and to waive technicalities in submissions.

- 12. SELECTION OF THE APPARENTLY SUCCESSFUL BIDDER:** The Review Team will evaluate

the proposals based on responsiveness to RFP key points and forward the completed scoring tools as well as copies of the proposals to the Commissioner of the Division or his/her designee for final review and determination of the Apparently Successful Bidder.

13. **NOTIFICATION OF AWARD:** DVHA will notify all bidders in writing of selection of the Apparently Successful Bidder(s). DVHA will notify all bidders when the contract(s) resulting from this RFP are signed by posting to the Electronic Bulletin Board (<http://www.vermontbidsystem.com>).

14. **OPTIONAL VENDOR DEBRIEFING:** Only Vendors who submit a Proposal may request an optional debriefing conference to discuss the evaluation of their Proposal. The request for a debriefing conference must be made in writing within five (5) business days of selection notification (e-mail request is acceptable) and must be addressed to the Sole Point of Contact.

The optional debriefing will not include any comparison between Vendor's Proposal and any other Proposals submitted. However, the Authority will discuss the factors considered in the evaluation of the requesting Vendor's Proposal and address questions and concerns about Vendor's performance with regard to the solicitation requirements. The debriefing conference may take place in-person or by telephone.

15. **PROTEST PROCEDURES:** Vendors who have submitted a Proposal to this solicitation and have had a debriefing conference may make protests. Upon completion of the debriefing conference, a Vendor is allowed five (5) Business Days to file a formal protest of the solicitation. Information regarding the grounds for filing and resolution of protests is contained in Section 16. Bid Protest Policy and Section 17. Bid Protest Policy Procedure.

16. **BID PROTEST POLICY:** A bidder on a Request for Proposal may protest any perceived deficiencies in the bidding or selection process by submitting a letter to the Legal Unit of the Contracts and Grants Unit at the Department of Vermont Health Access explaining the nature of the deficiency and how it adversely affected the process. Bidders may submit protests at any time from the date of selection of the bid until close of business on the fifth (5<sup>th</sup>) business day after a winning bid has been selected.

Upon receipt of the protest letter, the Legal Unit and the Financial Director of the Grants and Contracts Unit will review the protest letter and other relevant information and will make a determination of the validity of the bid protest and what remedy, if any, should be used to respond to the protest. This decision shall be made within fifteen (15) business days of the receipt of the protest.

If the protestant is not satisfied with the decision of the Legal Unit and Financial Director of the Contracts and Grants Unit at the Department of Vermont Health Access, the protestant may appeal the decision to the Commissioner of the Department of Vermont Health Access. Such appeal shall be commenced within five (5) business days of receipt of the protesting bidder of the decision of the Financial Director of the Contracts and Grants Unit.

Upon receipt of the written appeal, the Commissioner will render a final decision regarding the protesting bidder's appeal within twenty (20) business days.

17. **BID PROTEST POLICY PROCEDURE:** Letters of protest regarding appeals must be delivered by U.S. mail, or hand delivered, no later than 3:00PM on the fifth (5<sup>th</sup>) business day after a winning bid has been selected to the following office:

Legal Unit  
Department of Vermont Health Access  
NOB 1 South, 250 State Drive  
Waterbury, Vermont 05671

The term business day means Monday through Friday that is not a legal holiday, or snow day declared by the Vermont Governor.

There is no discovery process involved in the bid protest process. The process is designed to provide an administrative review of the position of the protestant. There is no hearing in person or evidence taken in this process.

The protestor is encouraged, but not required, to submit any documentation that demonstrates the points asserted.

18. **REMITTANCE OF PAYMENT:** Contractor must specify the address to which payments will be sent and provide a current W-9 to DVHA upon request.

19. **CONTRACT ACCEPTANCE:** If the Apparently Successful Bidder(s) refuses to sign the agreement within ten (10) business days of delivery, DVHA may cancel the selection and award to the next highest-ranked bidder(s).

20. **STATE AND AGENCY CUSTOMARY CONTRACTING PROVISIONS:** The State of Vermont expects the vendor to agree to the State and Agency Customary Contracting Provisions outlined in Attachments C, D, E and F of this RFP. Exceptions to the State and Agency Customary Contracting provisions shall be noted in the bidder's cover letter and further defined by completing the Proposed Changes to Standard Terms and Conditions form included in Appendix A. Exceptions shall be subject to review by the Office of the Attorney General.

Failure to note exceptions will be deemed to be acceptance of the Standard State Provision for Contracts and Grants as outlined in Attachment C, D, E and F of the RFP. If exceptions are not noted in the RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State of Vermont.

DVHA reserves the right to incorporate standard contract provisions which can be mutually agreed upon into any contract negotiated as a result of any proposal submitted in response to this RFP. These provisions may include such things as the normal day-to-day relationships with the vendor, but may not substantially alter the requirements of this RFP. Further, the successful vendor is to be aware that all material submitted in response to this RFP, as well as the RFP itself, may be incorporated as part of the final contract. The selected vendor(s) will sign a contract with DVHA to provide the items named in their responses, at the prices listed. This contract will be subject to review throughout its term. DVHA will consider cancellation upon discovery that the selected vendor is in violation of any portion of the agreement, including an inability by the vendor to provide the products, support and/or service offered in their response. If two or more organizations' joint proposal is apparently successful, one organization must be designated as the Prime Bidder. The Prime Bidder will be DVHA's sole point of contact and will bear sole responsibility for performance under any resulting agreement.

**ATTACHMENT C**  
**STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS**  
**REVISED JULY 1, 2016**

**1. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

**2. Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

**6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.



The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$2,000,000 Each Occurrence

\$3,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with the Contract, including but not limited to bills, invoices, progress reports and other proofs of work.

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

**B. Internal Controls:** In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

**C. Mandatory Disclosures:** In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

**16. Taxes Due to the State:**

**A.** Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

**B.** Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

**C.** Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

**D.** Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

**A.** is not under any obligation to pay child support; or

**B.** is under such an obligation and is in good standing with respect to that obligation; or

**C.** has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**23. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

**24. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**25. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**26. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**27. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

**A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

**B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations

under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.

**C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**29. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**30. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**31. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**32. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(Revised 7/1/16 - End of Standard Provisions)

## ATTACHMENT D

### MODIFICATION OF CUSTOMARY PROVISIONS

#### OF

### ATTACHMENT C OR ATTACHMENT F

**1. The insurance requirements contained in Attachment C, Section 8 are hereby modified to add the following:**

*Professional Liability:* Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of ***\$1,000,000*** per occurrence and ***\$3,000,000*** aggregate.

**2. The data breach notification requirement contained in Attachment F, Section 7 is hereby deleted and replaced with the following:**

*Data Breaches:* Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information

identified above within two (2) business days of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

**3. Reasons for Modifications:**

Attachment C is modified to include Professional Liability and Breach Notification Coverage.

Attachment F is modified to align with the reporting requirements of Attachment E.

**APPROVAL:**

\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL

DATE: \_\_\_\_\_

*State of Vermont – Attachment D  
Revised AHS – 10-30-2010*

**ATTACHMENT E  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its \_\_\_\_\_ **[Insert Name of AHS Department, Office or Division]** (“Covered Entity”) and **[Insert Name of Contractor/Grantee]** (“Business Associate”) as of \_\_\_\_\_ (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

**1. Definitions.** All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations.

“Agent” means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

“Breach” means the acquisition, access, use or disclosure of protected health information (PHI) which compromises the security or privacy of the PHI, except as excluded in the definition of Breach in 45 CFR § 164.402.

“Business Associate shall have the meaning given in 45 CFR § 160.103.

“Individual” includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“Protected Health Information” or PHI shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Agency.

“Security Incident” means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

“Services” includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR § 160.103 under the definition of Business Associate.

“Subcontractor” means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

**2. Identification and Disclosure of Privacy and Security Offices.** Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity’s contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

**3. Permitted and Required Uses/Disclosures of PHI.**

3.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. The uses and disclosures of Business Associate are limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the underlying agreement. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 18 or, (b) as otherwise permitted by Section 3.

3.3 Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate's Subcontractor(s), of the PHI that Business Associate handles on behalf of Covered Entity and that it passes on to Subcontractors.

**4. Business Activities.** Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the Agreement requires the person or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

**5. Safeguards.** Business Associate, its Agent(s) and Subcontractor(s) shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate or its Subcontractor(s) shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate or its Agent(s) and Subcontractor(s) shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

**6. Documenting and Reporting Breaches.**

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

6.2 Business Associate shall provide Covered Entity with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR § 164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it. Business Associate shall require its Subcontractor(s) to agree to these same terms and conditions.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall



make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach of which the Subcontractor becomes aware, no later than two (2) business days after becomes aware of the Breach.

**7. Mitigation and Corrective Action.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

**8. Providing Notice of Breaches.**

8.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate.

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

8.3 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.

8.4 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5)

contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.5 Business Associate shall notify individuals of Breaches as specified in 45 CFR § 164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business Associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

**9. Agreements with Subcontractors.** Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the Business Associate Agreement it enters into with a subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

**10. Access to PHI.** Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

**11. Amendment of PHI.** Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.

**12. Accounting of Disclosures.** Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

**13. Books and Records.** Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary of HHS in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity, upon Covered

Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

**14. Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 19.8.

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

**15. Return/Destruction of PHI.**

15.1 Business Associate in connection with the expiration or termination of the contract or grant shall return or destroy, at the discretion of the Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract or grant that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

15.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to all Agents and Subcontractors of Business Associate.

**16. Penalties.** Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

**17. Training.** Business Associate understands that it is its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, Business Associate shall participate in AHS training regarding the use, confidentiality, and security of

PHI, however, participation in such training shall not supplant nor relieve Business Associate of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

**18. Security Rule Obligations.** The following provisions of this section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

18.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

18.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

18.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than two (2) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

18.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

**19. Miscellaneous.**

19.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.

19.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

19.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

19.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule, and the HIPAA omnibus final rule) in construing the meaning and effect of this Agreement.

19.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

19.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity even if some of that information relates to specific services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.

19.7 Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.

19.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

Rev: 7/7/17

#### ATTACHMENT F AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. **Definitions:** For purposes of this Attachment F, the term "Agreement" shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term "Party" when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term "Party" shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term "Party" as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term "Party" shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.

2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver*):

**Inspection and Retention of Records:** In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

**Subcontracting for Medicaid Services:** Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of this Agreement. Party shall make available on request all contracts, subcontracts and service provider agreements between the Party, subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

**Medicaid Notification of Termination Requirements:** Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

**Encounter Data:** Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

**Federal Medicaid System Security Requirements Compliance:** Party shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this Agreement

(and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

4. **Workplace Violence Prevention and Crisis Response** (*applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services*):

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

5. **Non-Discrimination:**

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. **Employees and Independent Contractors:**

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as “employees” and “independent contractors” for all purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of “workers” and “independent contractors” relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

7. **Data Protection and Privacy:**

**Protected Health Information:** Party shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Agreement. Party shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

**Substance Abuse Treatment Information:** Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

**Protection of Personal Information:** Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or identifiable information that is linked or linkable to a specific person, such as date and place of birth, mother’s maiden name, etc.

**Other Confidential Consumer Information:** Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

**Data Breaches:** Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

8. **Abuse and Neglect of Children and Vulnerable Adults:**

**Abuse Registry.** Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with



this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact though (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

**Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. **Information Technology Systems:**

**Computing and Communication:** Party shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Party as part of this agreement. Options include, but are not limited to:

1. Party's provision of certified computing equipment, peripherals and mobile devices, on a separate Party's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

**Intellectual Property/Work Product Ownership:** All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement -- including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement, or are a result of the services required under this grant -- shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30-days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered

"work for hire," i.e., the State, not the Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

Party shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State of Vermont.

If Party is operating a system or application on behalf of the State of Vermont, Party shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Party's materials.

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

**Security and Data Transfers:** Party shall comply with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Party of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Party to implement any required.

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. Party will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 6 above.

10. **Other Provisions:**

**Environmental Tobacco Smoke.** Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will

refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

**2-1-1 Database:** If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The "Inclusion/Exclusion" policy can be found at [www.vermont211.org](http://www.vermont211.org).

**Voter Registration:** When designated by the Secretary of State, Party agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

**Drug Free Workplace Act:** Party will assure a drug-free workplace in accordance with 45 CFR Part 76.

**Lobbying:** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

**AHS ATT. F 12.31.16**

## INFORMATION FROM THE BIDDER

### 1. QUALITY OF BIDDER'S EXPERIENCE

In this Section you are telling the State about the related experience you or your company has with these services, Medicaid related physician reviews, accepted Medicaid treatment guidelines and policy, areas of expertise, etc.

Please provide details of experience in review and evaluation of this nature including:

1. Medical research experience, especially with identifying the current medical community's standards concerning medically necessary services and acceptable methods for the prevention, diagnosis, and treatment of patient's disease, condition, and/or disorder that results in health impairments and/or disability, as well as experimental treatment and therapies. What resources does the bidder currently have or can access to conduct professionally appropriate research and/or seek out external expert medical opinions?
2. Clinical experience, especially as to the bidder's breadth of knowledge for diseases, conditions, and/or disorders that Vermonters commonly experience or acquire. This includes clinical preference, management, and outcomes, as well as patient expectations and experiences, associated with relevant prevention, diagnosis, and treatment options currently available in the local medical community.

Total points for this section – 40.

### 2. TECHNICAL PROPOSAL

In this Section you are telling the State your strategy for utilization and review of Medicaid patient requirements. The State prefers bidders who have experience in Medicaid physician review and a solid knowledge of Medicaid treatment guidelines and policy.

Please provide details and strategies you use or may use to ensure timely submission of determinations including:

1. Ability to consistently and properly apply medical criteria for prior authorizations and medical necessity determinations that demonstrates adherence to clinically appropriate and necessary guidelines in your chosen field of practice.
2. Experience with managed care models, long-term care services and support, home health, community health services, and social determinants of health.
3. Ability to work under time limitations in an independent fashion on challenging projects.
4. Data or information available on vendor's treatment and post-treatment outcomes and/or patients' experiences with vendor.

Total points for this section –30.

### 3. PROGRAM COST

In this Section you are detailing how you will be funded to accomplish this work and how you bill for your work.

Total points for this section –30.

Proposals will be evaluated on total costs and the narrative describing your company's experience fiscally managing contracts of comparable scale, scope and complexity.

**1. QUALITY OF BIDDER'S EXPERIENCE**

The successful bidder will provide consultative services in the area of medical oversight, prior authorization case review and medical necessity determinations in the Medicaid Managed Care Environment on these activities, on an as needed basis, not to exceed twelve (12) hours per week, according to a mutually agreeable schedule as established by the Contractor, the State Clinical Operations Unit Director and the State's Chief Medical Officer. Knowledge of accepted Medicaid related physician review is preferred.

**2. TECHNICAL PROPOSAL**

**ATTACHMENT A: SPECIFICATION OF WORK TO BE PERFORMED**

1. Contractor will support the prospective review, concurrent review and retrospective review processes, commonly referred to as utilization review. The utilization review process compares requests for medical services ("utilization") to treatment guidelines that are deemed appropriate for such services. Contractor's work includes the preparation of a recommendation based on that comparison. The process applies to emergent and non-emergent claims for both providers and facilities. Examples include hysterectomies, bariatric surgery, MRI Scans, inpatient admissions and concurrent review of hospital stays, as well as procedures, medications and/or services that have recently been developed by the medical/scientific community but not yet commonly requested.
2. Contractor shall review specific requests for the procedures described above as and as assigned by the State's Clinical Operations Unit Director, and render a professional opinion regarding medical necessity using evidence-based literature when available, accepted medical standards of care, and/or Contractor's expert medical opinion. Decisions regarding the medical necessity of requested procedures shall adhere to the definition of medical necessity found in Vermont Medicaid Covered Service Rule 7103.
3. Contractor shall request and/or seek any additional clinical information necessary from the treating and/or referring provider in order to complete the reviews in a timely manner.
4. Contractor shall work in collaboration with the Chief Medical Officer regarding utilization management activities and with the Medicaid clinical staff including Quality Improvement, Chronic Care, Program Integrity, and Pharmacy to identify areas for concern in the utilization program.
5. When the Chief Medical Officer is unavailable, Contractor shall review beneficiary appeals regarding requests for medical services that have previously been denied, and other duties as needed.

6. Contractor shall submit her/his medical opinion in a written report, in person or electronically, within five (5) business days of receipt of the request to render a medical opinion. Contractor shall inform the State in writing if they cannot meet the deadline for a request, but such notification shall not waive or extinguish the penalties associated with late submission per Attachment B.
7. When evidence-based national criteria for medical necessity are unavailable, Contractor shall research, recommend and/or review any clinical criteria that have been developed by the State. If necessary, contractor shall seek out subject matter experts for consultation.
8. Contractor shall keep a monthly record of all activities involved in fulfilling these responsibilities; including time spent reviewing cases or new clinical criteria. This record shall be submitted to the State at the end of each month.
9. The State shall provide office space, access to a computer and additional office supplies of a reasonable nature. Contractor shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Contractor on an "AS IS, WHERE IS" basis, with no warranties whatsoever.
10. Contractor shall maintain an active license to practice medicine in the State of Vermont during the entire contract term. Contractor is solely responsible for maintaining said license.

#### Performance Measures

Pursuant to paragraph 6 above, in the event the Contractor fails to submit a medical opinion on a given review within five (5) business days, the Contractor's hourly rate for any hours worked on the appeal will be reduced, as specified in Section 3 of Attachment B. This reduced rate will only apply to hours expended on the review in question.

### **3. PROGRAM COSTS:**

#### **ATTACHMENT B: PROGRAM COSTS/PAYMENT PROVISIONS**

##### **3.1. PROGRAM COSTS**

In this Section, describe the bidder's proposed hourly rates for this program including submitting the completed Rate Sheet which can be found in Appendix A. NOTE: compensation to conduct utilization management activities cannot be structured as to incentivize Contractor to deny, limit, or discontinue medically necessary services to any enrollee.

##### **3.2. CONTRACT VALUE/QUANTITY**

The estimated annual value of this contract is unknown at this time. The annual value and quantities are estimated only based on prior usage and may be increased or decreased to meet actual requirements. Contract issuance is contingent upon funding availability. The maximum dollar amount payable under this contract is not intended to guarantee any amount of payment. The Contractor will be reimbursed for all deliverables satisfactorily submitted to the State.

All hourly rates are inclusive of travel expenses under this contract.

No benefits or insurance will be reimbursed by the State. State will not pay or reimburse Contractor for any licensing or continuing educational expenses associated with work performed under this agreement.

As referenced in the performance measures section of Attachment A; Specifications of Work to be Performed, the Contractor's hourly rate shall be reduced by twenty-five percent (25%) per hour for any hours worked on an assigned physician review where a written medical opinion was submitted in excess of five (5) business days.

### **3.3 EXECUTIVE ORDER 05-16: CLIMATE CHANGE CONSIDERATIONS IN STATE PROCUREMENTS:**

For bid amounts exceeding \$25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP.

After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or manufactured in the State, as explained in the Method of Award section. But, such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.

### **3.4 INVOICES**

Contractor will bill the State on or about the first of each month for services authorized under the contract and provided during the previous month. Upon timely and accurate submission of invoices, the State will pay the Contractor for the services on a NET 30-day payment term.

- Invoice will be in such form as may be required by the State and will contain the following:
  - Current date of submission
  - Unique invoice number
  - Contract number (listed on the front page of the contract)
  - Date of services, description of work and number of hours worked
  - Contractor's signature
- The invoice requirements apply to all the programs covered under this RFP. Invoices are to be sent electronically to:

Susan Whitney  
Grants and Contracts Administrator  
Business Unit  
Department of Vermont Health Access (DVHA)  
[Susan.Whitney@vermont.gov](mailto:Susan.Whitney@vermont.gov)

Proposals will be evaluated on total costs and the narrative describing your company's experience fiscally managing contracts of comparable scale, scope and complexity.

**APPENDIX A**  
**REQUIRED GENERAL FORMS**  
**REQUEST FOR PROPOSAL**



**COVER SHEET**  
**DEPARTMENT OF VERMONT HEALTH ACCESS**

**APPLICANT INFORMATION SHEET**

(To be included in the proposal packet)

**\*\*NOTE:** This information sheet must be included as the cover sheet of the application being submitted. Be sure to complete this form in its entirety. Please fill out and attach a W-9 to this form signed by the duly appointed signing official for your company.

**Applicant Organization:** \_\_\_\_\_

Contact Person: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Town, State, ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax #: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**Fiscal Agent (Organization Name):** \_\_\_\_\_

FY Starts: \_\_\_\_\_ FY Ends: \_\_\_\_\_

Financial Contact Person: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Town, State, ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax #: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

**Whom should we contact if we have questions about this application?**

Name \_\_\_\_\_ Phone Number \_\_\_\_\_

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**VERMONT TAX CERTIFICATE AND INSURANCE CERTIFICATE****(to be included in the proposal packet)**

To meet the requirements of Vermont Statute 32 V.S.A. subsection 3113, by law, no agency of the State may enter into extend or renew any contract for the provision of goods, services or real estate space with any person unless such person first certifies, under the pains and penalties of perjury, that he or she is in good standing with the Department of Taxes. A person is in good standing if no taxes are due, if the liability for any tax that may be due is on appeal, or if the person is in compliance with a payment plan approved by the Commissioner of Taxes, 32 V.S.A. subsection 3113. In signing this bid, the bidder certifies under the pains and penalties of perjury that the company/individual is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due to the State of Vermont as of the date this statement is made.

Bidder further certifies that the company/individual is in compliance with the State's insurance requirements as detailed in section 21 of the Purchasing and Contract Administration Terms and Conditions. All necessary certificates must be received prior to contract issuance. If the certificate of insurance is not received by the identified single point of contact prior to contract issuance, the State of Vermont reserves the right to select another vendor. Please reference this RFP# when submitting the certificate of insurance.

Insurance Certificate: Attached \_\_\_\_\_ Will provide upon notification of award: \_\_\_\_\_ (within 5 days)

Delivery Offered \_\_\_\_\_ Days After Notice of Award

Terms of Sale \_\_\_\_\_

Quotation Valid for \_\_\_\_\_ Days \_\_\_\_\_

Date: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fed ID or SS Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Signature (Bid Not Valid Unless Signed)

(Type or Print)

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**CERTIFICATIONS AND ASSURANCES**

**(to be included in the proposal packet)**

I/we make the following certifications and assurances as a required element of the bid or proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. The prices and/or cost data have been determined independently, without consultation, communication or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal or bid.
2. The attached proposal or bid is a firm offer for a period of 120 days following receipt, and it may be accepted by the DVHA without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 120 day period.
3. In preparing this proposal or bid, I/we have not been assisted by any current employee of the State of Vermont whose duties related (or did relate) to this proposal, bid or prospective contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this proposal or bid. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document).
4. I/we understand that the DVHA will not reimburse me/us for any costs incurred in the preparation of this proposal or bid. All proposals or bids become the property of DVHA.
5. I/we understand that any contract(s) awarded as a result of this RFP will incorporate terms and conditions substantially similar to those attached to the RFP. I/we certify that I/we will comply with these or substantially similar terms and conditions if selected as a Contractor.
6. I hereby certify that I have examined the accompanying RFP forms prepared by: \_\_\_\_\_ for the funding period beginning \_\_\_\_\_ and ending \_\_\_\_\_ and that to the best of my knowledge and belief, the contents are true, and correct, and complete statements prepared from the books and records of the provider in accordance with applicable instructions, except as noted.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

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**CERTIFICATE OF COMPLIANCE**  
(to be included in the proposal packet)

**For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.**

- A. **NON COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.
- B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Contract Provisions, and any other contract attachments included with this RFP.
- C. **FORM OF PAYMENT:** Does Bidder accept the Visa Purchasing Card as a form of payment?
- \_\_\_\_ Yes \_\_\_\_ No
- D. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds \$250,000.00.

**Self-Reporting.** Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

Summary of Detailed Information	Date of Notification	Outcome

**Subcontractor Reporting.** Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

E. Executive Order 05 – 16: Climate Change Considerations in State Procurements Certification

**Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):**

1. Bidder owns, leases or utilizes, for business purposes, space that has received:

- ☐ Energy Star® Certification
  - ☐ LEED®, Green Globes®, or Living Buildings Challenge<sup>SM</sup> Certification
  - ☐ Other internationally recognized building certification:
- 

2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder's place of business. Please explain:

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3. Please Check all that apply:

- ☐ Bidder can claim on-site renewable power or anaerobic-digester power ("cow-power"). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.
  - ☐ Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.
  - ☐ Bidder's heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.
  - ☐ Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this?
  - ☐ Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc..
  - ☐ Bidder offers employees an option for a fossil fuel divestment retirement account.
  - ☐ Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:
- 
- 

4. Please list any additional practices that promote clean energy and take action to address climate change:

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**F. Acknowledge receipt of the following Addenda:**

Addendum No.:	_____	Dated:	_____
Addendum No.:	_____	Dated:	_____
Addendum No.:	_____	Dated:	_____

Bidder Name:	_____	Contact Name:	_____
Address:	_____	Fax Number:	_____
	_____	Telephone:	_____
	_____	E-Mail:	_____
By:	_____	Name:	_____
	Signature of Bidder (or Representative)		(Type or Print)

**RATE SHEET**

(to be included in the proposal packet)

\*\*\*EXAMPLE\*\*\*

Company Name: \_\_\_\_\_

Contract Person for all RFPS: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Program:  
\_\_\_\_\_

Proposed Rate(s)  
\_\_\_\_\_  
(daily rate, if applicable)

**SUMMARY OF FUNDS**

(to be included in the proposal packet)

Organization Name \_\_\_\_\_

Fed ID # \_\_\_\_\_

Summary of Funds received during your current fiscal year

\_\_\_\_\_ to \_\_\_\_\_

Source of Funds	Contract/grant total award	Briefly describe activities supported by these funds
Income total		



**PROPOSED CHANGES TO STANDARD TERMS AND CONDITIONS**

(If Applicable)

**Instructions**

The Vendor must include any proposed exception to any Standard State Provision of Contracts and Grants or Terms and Conditions for Technology Contracts. These proposed exceptions will be outlined in the following table:

**Terms and Condition Exceptions**

ITEM #	Attachment	REFERENCE (Section, Page, Paragraph)	Mark Up Original With Proposed Change	RATIONALE
1.				
2.				
3.				

&lt;Vendor may add rows as appropriate&gt;

**SUBCONTRACTOR LETTERS**

(If Applicable)

**Instructions**

Provide a letter from each subcontractor that will be associated with this Contract that is signed by someone authorized to legally bind the subcontractor.

The letter must include:

- The subcontractor's legal status, federal tax identification number, D-U-N-S number, and principal place of business address;
- The name, phone number, fax number, email address, and mailing address of a person who is authorized to legally bind the subcontractor to contractual obligations;
- A description of the work the subcontractor will do;
- A commitment to do the work if the Contractor is selected; and

A statement that the subcontractor has read and understood the RFP and will comply with the requirements of the RFP.